



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

June 24, 1947

**Mrs. Eloween Mesch, R. N.
Secretary-Treasurer
State Board of Nurse Examiners
1035 Milam Building
San Antonio, Texas**

Opinion No. V-265

**Re: Authority of Board of
Nurse Examiners to re-
tain the National League
of Nursing Education to
frame and grade the exam-
inations of applicants
for registered nurse li-
censes.**

Dear Mrs. Mesch:

**Reference is made to your letter under date of
June 2, 1947, a portion of which follows:**

**"Ever since it has been organized it has
been the practice of the Board for the
various members to write the necessary
examination questions to be submitted to
candidates for registration. For the
last few years an organization known as
the National League of Nursing Education
has been preparing examination questions
on various subjects for submission to
candidates for registration as graduate
nurses all over the United States. Some
of the directors of schools of nursing
in the State of Texas are urging upon
the Board the use of these questions.**

**"As understood by the Board the examina-
tion questions prepared by the League
are forwarded to the Board and the Board
holds the examinations. As part of the
agreement for the furnishing of the
examination questions, it is understood
that none of the questions will be added
to or subtracted from and that all answers
will be forwarded to the League of Nursing**

Education where they are graded by a process used by the League. In other words upon payment of the required fees, the Board of Nurse Examiners of the State of Texas would receive the questions having nothing to do with the framing thereof nor with the grading of the answers.

"This Board under the various statutes makes the necessary rules and regulations for the governing of the curriculum for the nursing schools in Texas, has always prepared the necessary examinations and examined the answers of all applicants. The Board feels that under the statutes governing its actions, that it is not authorized to delegate to a person or persons or organization over which it has no control the examination of candidates for licensing under the statutes of Texas and it has instructed me to request from you an opinion as to whether or not this Board would be authorized to use the service of the League of Nursing Education above outlined in the preparing and correcting of examination questions and answers of applicants for licensing as registered graduate nurses in the State of Texas."

Article 4518a, Vernon's Civil Statutes, provides in part as follows:

"...And such graduate upon presenting such certificate to the State Board of Nurse Examiners shall upon the payment of required fees be entitled to take the examinations prescribed by the State Board; and upon making the passing grades prescribed by the Board, shall be entitled to receive from said Board a certificate certifying that such person is a graduate nurse and entitled to practice as a registered nurse in the State of Texas...."

Article 4519, Vernon's Civil Statutes, provides in part as follows:

"...A grade of not less than seventy on any one subject shall be required to pass the examination. The examination shall be of such character as to determine the fitness of the applicant to practice professional nursing. If the result of the examination be satisfactory to the board, a certificate shall be issued to the applicant, signed by the president and secretary and attested by the seal of said board, which certificate shall qualify the person receiving the same to practice professional nursing in this State..."

Although Article 4514, Vernon's Civil Statutes provides that "the board may make such by-laws and rules as may be necessary to govern its proceedings and to carry into effect the purpose of this law" it is apparent that the Legislature, in designating the agency the "Board of Nurse Examiners", intended just what the name implies; that is, that the Board should examine the applicants for registered nurse licenses, prescribe the examinations, determine that the examinations are of such character as to ascertain the fitness of the applicants to practice professional nursing, and to supervise generally the nursing profession.

The Legislature, in creating the Board of Nurse Examiners, delegated to such Board certain functions and in addition gave it the power to "make such bylaws and rules as may be necessary to govern its proceedings and to carry into effect the purpose of this law." Obviously, the law was enacted to regulate the profession of nursing, and it was intended that the Board should be the agency to carry out the administration of such law.

With reference to subdelegation of power, that is, the authority of an administrative agency to delegate power previously delegated to it, we quote from Volume 1, Section 312, page 72, et seq, Sutherland on Statutory Construction:

"...Nevertheless, in many statutes it is customary to grant power directly to the executive head or the board or commission. If the statute expressly authorizes the redelegation to a subordinate official,

the subdelegation is valid. Where the statute is silent on the question of redelegation and the delegation was to a single executive head, it is almost universally held that the legislature, understanding the impossibility of personal performance, impliedly authorized the delegation of authority to subordinates...

"Probably the most satisfactory rule in the subdelegation situation is this: Where the legislature intended that the exercise of a particular function should be performed by persons with special qualifications, then a subdelegation is invalid; but where no particular qualifications are necessary for the exercise of the function, then the exercise may be delegated to subordinate officials."

Again, in Volume 3, Section 6603, page 268 et seq, Sutherland on Statutory Construction, the following is said with reference to administrative agencies:

"Administrative agencies are purely creatures of legislation without inherent or common-law powers. The general rule applied to statutes granting powers to administrative boards, agencies or tribunals is that only those powers are granted which are expressly or by necessary implication conferred, and the effect usually has been to accomplish a rather strict interpretation against the exercise of the power claimed by the administrative body. The rule has been variously phrased, including language to the effect that a power must be 'plainly' expressed; that a power is not to be 'inferred' or taken by 'implication'; or that the jurisdiction of an administrative agency is not to be 'presumed.' ..."

By referring to the entire act governing the profession of nursing, it will be noted that no express provisions are contained therein authorizing the Board

of Nurse Examiners to redelegate any of the powers conferred upon it. Neither can it be said that the act authorizes, by implication, a redelegation of such powers.

It is, therefore, the opinion of this department that the Board of Nurse Examiners is not authorized to use the service of the League of Nursing Education as outlined in your request.

SUMMARY

The Board of Nurse Examiners is not authorized to delegate to the National League of Nursing Education the preparation and grading of examination questions to be submitted to applicants for registered nurse licenses. Such duties are delegated by the Legislature to the State Board of Nurse Examiners, and the Board is not authorized to redelegate the duties to another agency.

Yours very truly

ATTORNEY GENERAL OF TEXAS

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APPROVED

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